UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

To: Ed Messina, Acting Director
Office of Pesticide Programs

From: Michael L. Goodis, Director
Registration Division
Office of Pesticide Programs

Michael Goodis 7/16/20

Subject: Repeat Section 18 Emergency Exemption Requests for Bifenthrin Use on Apple, Peach, and Nectarine to Control the Brown Marmorated Stink Bug (BMSB) in New York (20-NY-05, -06, and -07)

This is the **ninth** year that emergency exemption requests have been submitted for these uses, which have been authorized for the past eight years to DE, MD, NC, NJ, NY, PA, VA, and WV (with the exception of DE who did not request exemptions for the uses in 2019). For the 2020 season, exemptions for these uses were recently authorized for MD, NC, PA, VA and WV. The use pattern requested this year is the same for all three crops and is identical to that from the past exemptions. For further details about the emergency and risk evaluations, the 2012 Decision Memorandum is attached.

2019 Use Report: The New York State Department of Environmental Conservation (NYSDEC) was authorized a maximum of 7,521 acres under the 2019 exemption and indicated that approximately 6,271 acres were treated, and that no insect damage occurred in the treated orchards.

Applicant Requests: The applicant states that the BMSB, a recently introduced invasive pest, continues to pose a threat to pome and stone fruit trees in the US. There are no natural enemies in the US to provide reliable biological control. Furthermore, available pesticide controls are limited and inadequate to provide season-long control of BMSB populations that reach damaging levels, as first occurred in 2010. Because BMSB populations vary between years and over different localized areas, the acreage treated has varied. NYSDEC indicated that although lower levels of BMSB have been observed in recent years, trap captures in 2019 continued to be above the threshold for treatment beginning in mid-August. As such, this use is still needed for management of the BMSB particularly in historically damaged orchards with mid- to late-maturing varieties, and an emergency continues to exist.

Agency Evaluation: All findings of the science divisions (BEAD, HED, and EFED) supported the criteria for allowing emergency exemptions for these uses. Time-limited tolerances for apple, peach, and nectarine at 0.5 ppm were established for the previous exemptions and are set to expire on December 31, 2021.

Progress Toward Registration: IR-4 submitted tolerance petitions to EPA in 2016 to support the registration of these uses. The PRIA date was extended to September 25, 2020 to allow for full evaluation of bifenthrin in connection with Registration Review, including assessing the impact of these and other proposed new uses. Under Registration Review, availability of a proposed interim decision published in the Federal Register on May 5, 2020, and the comment period ended on July 6, 2020. PRD has indicated that an interim decision is targeted for the 4th quarter of FY20. PRD also published an ecological risk mitigation proposal in the Federal Register, in November of 2019 for 23 pyrethroids, including bifenthrin, and the public comment period for that document closed on February 12, 2020. Therefore, progress has been made toward conclusion of the Registration Review which has delayed EPA's decision on the registration actions for these uses.

Recommendation: RD has confirmed that the need still exists and there does not appear to be any outstanding risk data that might undermine the previous safety findings. The RD/MUERB analyst confirmed that these requests meet the criteria for re-certification of the emergency and a streamlined application for 2021, and this determination is included in the attached letter. Therefore, I recommend that the attached action be approved.

Concurrence: Ed Messina

Ed Messina, Acting Director
Office of Pesticide Programs

Date: July 16, 2020